

OCT 15 '01 04:11PM US COURTS

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Post-It Fax Note	7671	Date	10/15/01	# of pages	2
To	STEVE, CAMERON, SCOTT	From	CURT FRANKLIN		
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Post-It Fax Note	7671	Date	10/16/01	# of pages	2
To	Ann Williamson	From	Scott Peterson		
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U.S. COURTS

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 REC'D  
 CAMERON S. SURKE,  
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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

 ASARCO INCORPORATED; COEUR D'ALENE  
 MINES CORPORATION; CALLAHAN  
 MINING COMPANY; SUNSHINE PRECIOUS  
 METALS; SUNSHINE MINING COMPANY,

Defendants.

Case No. CV94-206-N-EJL

ORDER

Pending before the Court in the above-entitled matter is Plaintiffs' Emergency Request for Clarification or Modification of the Court's September 30, 2001 Order (Docket No. 99). The Court's staff attorney contacted counsel and indicated that any responsive briefing to the motion needed to be filed by the morning of October 15, 2001. The Court has reviewed the motion and related briefing and is now prepared to rule on the emergency request.

In the Court's Order of September 30, 2001, it was not the intent of the Court to modify the Consent Decree in any particular at this time. The Court's directive to the Defendants to continue with "high risk" restoration projects was to ensure there was not a slow down in the work required under the Consent Decree and because it was the Court's impression from what counsel stated at the hearing that "high risk" work was the type of work being done at the present time. The Court now

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understands that not all of the 145 yard removals scheduled for this year by agreement of the parties are technically "high risk" as that term is defined in the Consent Decree.

With only limited time available to complete the yard removals for this year and because it appears the Defendants acted in good faith based on their interpretation of the Court's order,<sup>1</sup> the Court is going to allow the Defendants to defer completion of the remediation on the remaining non-high risk properties scheduled for this year until further order of this Court. This decision is based on the fact there is no specific evidence presented that the public will face increased exposure by the deferral and that compliance may otherwise be impossible in light of the changing weather conditions.

The parties are urged to continue finalizing work plans for 2002 and the Defendants shall fully comply with all obligations under the Consent Decree for 2002 and beyond until further order of this Court. Should the evidence warrant a modification, it is evident from the estimated costs for work in 2002 - 2004 that the Court would have the flexibility it needs to make the modification without any money judgment being entered against the Plaintiffs.

Being fully advised in the premises, the Court hereby orders that the Emergency Request for Clarification or Modification of the September 30, 2001 Order (Docket No. 99) is **GRANTED** consistent with this Order.

Dated this 15 day of October, 2001.

  
EDWARD J. LODGE  
UNITED STATES DISTRICT COURT

<sup>1</sup>The parties are advised potential misunderstandings related to the Court's orders should be brought to the attention of the Court as soon as possible instead of canceling contracts and making completion of the remaining yard remediations unlikely for 2001. The Court is always available by telephone to resolve matters that may affect public safety.

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